

positive prison adjustment, “the Commonwealth might have countered with other evidence, including an expert holding a contrary opinion.” Id. at 281. Based on this reasoning, the Third Circuit concluded that a hearing on this issue should be held and a factual record developed. Id. at 284.

2. Before a hearing was scheduled, the District Attorney advised that it agreed with Petitioner that counsel was ineffective, such that the jury’s death sentence should be vacated. I previously concluded that given the District Attorney’s reluctance to fully investigate this matter and explain this concession, the OAG’s participation at an evidentiary hearing was necessary. I also found that the extent of the OAG’s participation was a matter within my broad discretion and appropriate under the law. (Feb. 12, 2021 Mem. Opinion, ECF No. 187, at 9–14.)
3. On February 26, 2021, after the first day of evidentiary hearing testimony, the District Attorney objected to the OAG’s participation, raising the same arguments as those already raised by Petitioner, which I have previously rejected. (See ECF Nos. 166, 170, 180, 187.) The District Attorney argues that “what began as a request for the views of an amicus has now morphed into the [OAG] becoming a full blown party to the litigation, in fact superseding the [District Attorney’s] prosecution without legal authority to do so.” (District Attorney’s Obj. at 1.) The District Attorney explains that it did not previously object to my request for the OAG’s participation because I had the authority to seek briefing from an *amicus* to assist with legal questions but that it did not previously anticipate the extent to which the OAG ultimately would participate.

4. For the same reasons set forth in my February 12, 2020 Memorandum Opinion, the District Attorney's objection is overruled. I reiterate that the District Attorney may present any evidence or argument that is admissible and appropriate.

BY THE COURT:

/s/ *Mitchell S. Goldberg*
MITCHELL S. GOLDBERG, J.